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COURT OF APPEAL, FOURH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff and Respondent,

v.

HECTOR ONTIVEROS,

Defendant,

FINANCIAL CASUALTY AND SURETY,

Real Party in Interest and Appellant.

D057121

(Super. Ct. No. SCS234804)

APPEAL from an order of the Superior Court of San Diego County, Timothy R. Walsh, Judge. Reversed.

Financial Casualty and Surety (Financial) appeals the denial of a motion to vacate the forfeiture of a bail bond after the court changed the defendant's arraignment date without notice. We reverse the order.

FACTUAL AND PROCEDURAL BACKGROUND

On December 13, 2009, Financial posted a \$45,000 bail bond on behalf of defendant Hector Ontiveros. As reflected in the bail bond, Ontiveros was ordered to appear in court on December 22, 2009 for arraignment. The court, without notifying either Financial or Ontiveros, called the case on December 21, 2009. When Ontiveros failed to appear on December 21, the court forfeited the bail bond under Penal Code¹ section 1305 and issued a bench warrant for Ontiveros. Ontiveros and a representative from Financial appeared in court on December 22 and discovered that the hearing was not on calendar and that the court had called the case the day before. Ontiveros was still unable to appear in court on December 22 because the court clerk could not locate his file, and the court would not call his case without it.

On February 5, 2010, Financial filed a motion to vacate forfeiture and exonerate bail. At the hearing on the motion on March 2, 2010, both parties stipulated that the court gave Ontiveros notice to appear on December 22, not December 21, and that the court incorrectly called the case on December 21. The court denied Financial's motion because, even if the court did call the case on the wrong day, Ontiveros still failed to appear in court on December 22. Financial contends Ontiveros did not fail to appear, the court prevented him from appearing, and therefore the forfeiture is inappropriate. The People filed no reply brief.

¹ All statutory references are to the Penal Code.

DISCUSSION

Review of a trial court's interpretation of section 1305 to a set of undisputed facts is de novo. (*County of Los Angeles v. Fairmont Specialty Group* (2009) 173 Cal.App.4th 538, 543 (*Fairmount Specialty*)).

A bail bond may only be forfeited if section 1305 applies. (*People v. Sacramento Bail Bonds* (1989) 210 Cal.App.3d 118, 120.) Section 1305, subdivision (a) states "a court shall in open court declare forfeited the undertaking of bail . . . if, without sufficient excuse, a defendant fails to appear" "Absent an order or other actual notification from the court that [the defendant's] appearance was required at a given date and time, the failure of [defendant] to appear cannot be grounds for forfeiture of bail under section 1305." (*People v. Classified Ins. Corp.* (1985) 164 Cal.App.3d 341, 346.) " ' "The law traditionally disfavors forfeitures and this disfavor extends to forfeiture of bail. [Citations.] Thus, Penal Code sections . . . dealing with forfeiture of bail bonds must be strictly construed in favor of the surety." ' ' ' (*Fairmont Specialty, supra*, 173 Cal.App.4th at 543, quoting *County of Los Angeles v. Surety Ins. Co.* (1984) 162 Cal.App.3d 58, 62.)

Here, the court agreed it ordered Ontiveros present on December 22 and, without notice, called the case on December 21. Despite this, it found the forfeiture appropriate because Ontiveros failed to appear in court on December 22. We disagree. Ontiveros and Financial appeared in court on December 22, the date they were ordered to, but the court would not call his case because it could not locate his file after calling the case the day before. Ontiveros did not fail to appear in court, the court refused to call his case.

Ontiveros missed his court date due to the fault of the court, not himself, which is a "sufficient excuse" under section 1305, subdivision (a).

DISPOSITION

The order denying the motion to vacate the forfeiture of the bail bond is reversed.

HUFFMAN, J.

WE CONCUR:

BENKE, Acting P. J.

O'ROURKE, J.